

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:16-cv-03088-
)	ELR
STATE OF GEORGIA,)	
)	
Defendant.)	
)	

**PLAINTIFF UNITED STATES' STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Pursuant to Federal Rule of Civil Procedure 56 and Rule 56.1(B) of the Civil Local Rules of Practice for the United States District Court for the Northern District of Georgia, Plaintiff the United States of America hereby submits that the following material facts are undisputed:

I. GNETS Program Overview

1. The program that became known as the GNETS Program was first located in Athens, Georgia and was reorganized into 24 regions in 1976 after additional locations were established. Defendant State of Georgia's Objections and Responses to the United States' First Requests for Admission ("Def. Resp. to RFA")

Nos. 2, 4 (attached hereto as “Ex. 1”).

2. In 2007, the State of Georgia (“State”) renamed the network of those programs the Georgia Network for Educational and Therapeutic Support Program (“GNETS Program” or “GNETS” or “Program”). Ex. 1, Def. Resp. to RFA No. 5.

3. The GNETS Program currently includes the following 24 regional GNETS programs, which collectively serve nearly all of the State’s 181 public school districts: Burwell, Cedarwood, Coastal Academy, Coastal Georgia Comprehensive Academy, DeKalb-Rockdale, Elam Alexander Academy, Flint Area Learning, Futures, Harrell Learning Center, H.A.V.E.N. Academy, Heartland Academy, Horizon Academy, Mainstay Academy, North Metro, NorthStar Educational and Therapeutic Services, Northwest Georgia Educational, Oak Tree, GNETS of Oconee, Pathways Educational, River Quest, The Lighthouse (formerly known as Rutland Academy), Sand Hills, South Metro, and Woodall. *See* Ex. 1, Def. Resp. to RFA No. 6; FY 24 GNETS Directory (July 2023), <https://www.gadoe.org/Curriculum-Instruction-and-Assessment/Special-Education-Services/Documents/GNETS/FY24%20%20GNETS%20%20Directory%20Updated%20%20July%202023.pdf> (last visited Oct. 18, 2023) (attached hereto as “Ex. 2”); FY 23 GNETS Directory (June 2022) (attached hereto as “Ex. 3”); AskDOE - Schools and Districts, <https://www.gadoe.org/External-Affairs-and->

Policy/AskDOE/Pages/Schools-and-

Districts.aspx#:~:text=There%20are%20currently%20181%20school,in%20the%20state%20of%20Georgia (last visited Oct. 18, 2023) (attached hereto as “Ex. 4”).

4. Among the current or former directors of these regional GNETS programs are: David Ackerman (Coastal Georgia Comprehensive Academy), Whitney Braddock (Cedarwood), Samuel Clemons (Horizon Academy), Brooke Cole (Elam Alexander Academy), Lisa Futch (Coastal Academy), Derrick Gilchrist (South Metro), Cassandra Holifield (North Metro), Haley Livingston (Harrell Learning Center), Jacqueline Neal (NorthStar Educational and Therapeutic Services), Talithia Newsome (Sand Hills), Celest Ngeve (former Rutland Academy), and Patricia Wolf (GNETS of Oconee). *See* Exs. 2-3.

5. Each of the 24 regional GNETS programs has a fiscal agent: a regional education service agency (“RESA”) or a local education agency (“LEA”). Ga. Code Ann. § 20-2-270.1; Ex. 1, Def. Resp. to RFA No. 7.

6. From 2016 to 2022, the GNETS Program served the following numbers of unique students:

- | | |
|-------------------------|-------------------------|
| • 2016 – 4,492 students | • 2020 – 3,344 students |
| • 2017 – 4,117 students | • 2021 – 2,963 students |
| • 2018 – 3,805 students | • 2022 – 2,925 students |
| • 2019 – 3,607 students | |

Ex. 1, Def. Resp. to RFA Nos. 110-114; *see* GA05242789 (attached hereto as “Ex. 5”); GA05242790 (attached hereto as “Ex. 6”).¹

7. The GNETS Program currently serves students in GNETS Centers—self-contained facilities that are separate from general education school settings and that only students in the GNETS Program attend—and GNETS school-based locations—that is, one or more classrooms populated exclusively by students in the GNETS Program but co-located with a general education school. Ex. 1, Def. Resp. to RFA No. 10; Deposition of Vickie Cleveland (“Cleveland Dep.”) 112:18-25, 115:4-7 (attached hereto as “Ex. A”); Deposition of Haley Livingston (“Livingston Dep.”) 126:5-127:24 (attached hereto as “Ex. B”); Deposition of Lakesha Stevenson (“Stevenson Dep.”) 93:3-5 (attached hereto as “Ex. C”).

II. The State’s Service Delivery System

8. The Georgia Department of Education (“GaDOE”) is the state agency responsible for “the fiscal and administrative management of certain aspects of K-12 public education, including the implementation of federal and state mandates.” Ga. Comp. R. & Regs. § 160-4-7-.15(1)(c) (attached hereto as “Ex. 7”).

¹ Exhibits 5 and 6 have been attached in a modified format to protect the names and other personally identifiable information of students in the GNETS Program.

9. Georgia’s State Board of Education, which supervises and oversees GaDOE in the execution of its managerial responsibilities, is the “constitutional authority which defines education policy for the public K-12 education agencies in Georgia.” Ex. 7 at ¶ (1)(c), (f).

10. The Georgia Department of Community Health (“DCH”) is the agency that administers the State’s Medicaid and PeachCare for Kids programs, through which eligible children access medically necessary Medicaid services, including Early Periodic Screening Diagnosis and Treatment Services. *See* Ga. Code Ann. §§ 31-2-1, 31-2-4; Ex. 8; Deposition of Wendy Tiegreen (“Tiegreen Dep.”) 216:3-7 (attached hereto as “Ex. D”).

11. Many mental health and therapeutic educational services and supports are reimbursable through the State’s Medicaid and PeachCare for Kids programs. *See generally* PeachCare for Kids website, <https://dch.georgia.gov/peachcare-kids> (last visited Oct. 18, 2023) (attached hereto as “Ex. 9”); *see* Deposition of Frank Berry (“Berry Dep.”) 164:18-166:13 (attached hereto as “Ex. E”).

12. The Georgia Department of Behavioral Health and Developmental Disabilities (“DBHDD”) is the state agency that oversees and administers policies, programs, and services for “mental health, developmental disabilities, and addictive diseases.” Ga. Code Ann. § 37-1-20; *see also* Ga. Code Ann. § 37-1-21; Ex. E, Berry

Dep. 165:11-166:13, 184:21-25; Deposition of Judith Fitzgerald (“J. Fitzgerald Dep.”) 52:21-53:19, 62:2-16 (attached hereto as “Ex. F”).

13. In 1990, the State passed a law requiring, among other things, the development of “a coordinated system of care so that children and adolescents with a severe emotional disturbance and their families will receive appropriate educational, nonresidential and residential mental health services.” Ga. Code Ann. § 49-5-220(a)(6).

14. The State legislature has charged DBHDD with “planning, developing, and implementing the coordinated system of care for” children with severe emotional disabilities, among others. Ga. Code Ann. § 49-5-220(b); *see also* Ga. Code Ann. § 37-1-20(24).

15. DBHDD funds and administers school-based behavioral health services through the Georgia Apex Program but excludes students at “GNETS standalone facilities” (also known as GNETS Centers) from receiving those services. *See APEX 3.0 Frequently Asked Questions*, <https://dbhdd.georgia.gov/be-supported/mental-health-children-young-adults-and-families/apex-3-faqs> (“In which types of schools can Apex services be implemented?”) (last visited Oct. 18, 2023) (attached hereto as “Ex. 10”); Ex. F, J. Fitzgerald Dep. 62:17-63:8; Deposition of Lisa Futch (“Futch Dep.”) 303:17-305:5 (attached hereto as “Ex. G”); Deposition of Dante McKay

(“McKay Dep.”) 158:2-16 (attached hereto as “Ex. H”).

III. The GNETS Rule

16. On June 15, 2017, the State Board of Education promulgated a rule related to the GNETS Program that appears as Rule 160-4-7-.15 in the Rules and Regulations of the State of Georgia (“the GNETS Rule”). Ex. 7.

17. The current GNETS Rule took effect on July 5, 2017, but prior to that time an earlier GNETS rule promulgated by the State Board of Education was in force. Ex. 7; *see* Ex. 1, Def. Resp. to RFA 120.

18. The GNETS Rule establishes the purpose of the GNETS Program, the characteristics that purport to distinguish the GNETS Program from other educational environments, the eligibility criteria for student placement in the GNETS Program, and the learning environments in which GNETS services may be delivered. *See* Ex. 7 at ¶¶ (2)-(4).

19. The GNETS Rule specifically states that “GNETS provides comprehensive educational and therapeutic support services to students who exhibit intense social, emotional and/or behavioral challenges with a severity, frequency or duration such that the provision of education and related services in the general education environment has not enabled him or her to benefit educationally based on the IEP [“Individualized Education Program”].” Ex. 7 at ¶ (2)(a).

20. The GNETS Rule also states that “GNETS will be staffed to meet the needs of a unique population of students requiring intensive individualized supports, including providing appropriate therapeutic services identified in the IEP” and that “GNETS services are implemented with greater intensity and frequency than what is typically delivered in a general education school environment.” Ex. 7 at ¶ (2)(c),(d).

21. According to the GNETS Rule:

[a]n individual student is considered for GNETS services only if his or her IEP team recommends GNETS services based on the existence of all of the following, which will be documented in the student’s education record:

1. Documentation that indicates evidence of annual IEP reviews, progress monitoring data aligned with IEP goals, documentation indicating prior services were delivered in a lesser restrictive environment and the student’s inability to receive FAPE in that environment.
2. A Functional Behavioral Assessment (FBA) and/or Behavior Intervention Plan (BIP) administered within the past year.
3. Documentation that a comprehensive reevaluation has been completed within the last 3 years.

Ex. 7 at ¶ (3)(c).

22. The GNETS Rule further provides that: “[t]he IEP team must determine that GNETS services are necessary for students to receive FAPE. Removal from the general education setting will occur only when the nature or severity of students’

social, emotional and/or behavioral challenges are such that education in a general education setting with the use of supplementary services and intensive individualized interventions cannot be achieved.” Ex. 7 at ¶ (4)(a).

23. The GNETS Rule requires that students be age 5 or older to receive GNETS services. Ex. 7 at ¶ (2)(a).

24. Under a prior version of the GNETS Rule promulgated by the State Board of Education, students could receive GNETS services as early as age 3 and a diagnosis of “emotional and behavior disorder” or “EBD” was a prerequisite for placement in the GNETS Program. *See* GA01286674 (attached hereto as “Ex. 11”) at GA01286675; Deposition of Brooke Cole (“Cole Dep.”) 66:16-67:18 (attached hereto as “Ex. I”); Deposition of Amber McCollum (“McCollum Dep.”) 87:1-19 (attached hereto as “Ex. J”).

25. The GNETS Rule specifies the environments in which GNETS services may be delivered, which range from “the general education setting in the student’s Zoned School or other public school” at one end of the spectrum to a full school day in “a facility dedicated to GNETS” at the other end of the spectrum. Ex. 7 at ¶ (4)(c).

26. The GNETS Rule specifies each of the entities the State has assigned a role in Program operations, prescribes those entities’ duties and responsibilities, and dictates the relationships between the entities and the State. Ex. 7 at ¶ (5).

27. This includes the following such entities: a) the State Board of Education (the “State Education Agency (SEA)”), b) individual school systems (the “local education agency (LEA)”), c) regional GNETS programs (“the GNETS”), and d) fiscal agents (which can be LEAs or RESAs). Ex. 7 at ¶ (5).

28. According to the GNETS Rule, the State Education Agency shall “[r]eceive and disburse funds appropriated by the Georgia General Assembly to support GNETS services.” Ex. 7 at ¶ (5)(a).

29. The GNETS Rule also charges the State Education Agency with “[a]dminister[ing] the grant funds” by performing the following duties and responsibilities in collaboration with GaDOE: “(i) [d]evelop[ing] rules and procedures regulating the operation of the GNETS grant, including the application process”; (ii) “[n]otify[ing] the fiscal agents regarding each fiscal year’s allocation and approv[ing] GNETS services budgets”; and (iii) “[m]onitor[ing] GNETS to ensure compliance with Federal and state policies, procedures, rules, and the delivery of appropriate instructional and therapeutic services.” Ex. 7 at ¶ (5)(a).

30. The GNETS Rule requires LEAs to perform several duties and responsibilities, including: (1) “[e]nsure that FAPE is delivered to students recommended for GNETS services in the least restrictive environment (LRE)”; (2) “[c]onvene IEP team meetings as required by State Board of Education Rule 1604-7-

.06”; (3) “[p]rovide transportation to and from a GNETS, as required, including transportation to and from home/school for students receiving GNETS services for part of the school day and for students participating in extracurricular activities”; (4) “[m]aintain and report student record data in accordance with the State Board of Education Rule 160-5-1-.07 and GaDOE guidance”; (5) “[a]llocate supports and resources, which may include in-kind services to GNETS to facilitate flexible models of service delivery and best practices for equitable educational support as appropriate”; and (6) “[s]ubmit student schedules to the GaDOE with the GNETS code,” among other things. Ex. 7 at ¶ (5)(b).

31. The GNETS Rule sets forth the duties and responsibilities of the regional GNETS programs, including but not limited to the programs’ obligations to: (1) “[c]ollaborate with LEAs to ensure that special education related services are provided to all students receiving GNETS services”; (2) “[c]ollaborate with GaDOE to implement activities outlined in the GNETS strategic plan to improve GNETS practices and student services”; (3) “[c]omplete the annual needs assessment embedded in the GNETS strategic plan”; (4) [s]ubmit application[s] for grant funds annually”; (5) “[s]ubmit budget request[s] to support program operations to fiscal agents”; (6) “[c]ollaborate with the fiscal agent to ensure appropriate expenditure of funds”; (7) “[s]ubmit student and program data as requested by the GaDOE”; (8)

“[c]onduct FBAs/BIPs for any student considered for GNETS services in accordance with (3)(c)(2) of this rule”; (9) “[c]ollaborate with LEAs to convene IEP team meetings as required by State Board Of Education Rule 160-4-7-.06”; and (10) “[m]onitor facilities for safety and accessibility for students served by GNETS and report identified concerns to all key stakeholders including, LEAs, fiscal agents and any other appropriate parties.” Ex. 7 at ¶ (5)(c).

32. Lastly, the GNETS Rule provides that the fiscal agent shall, among other things: (1) “[a]ccount for and disburse grant funds in accordance with general accepted accounting and financial reporting principles to restricted GNETS accounts . . .”; (2) “[s]ubmit financial reports as required by the SEA and the GaDOE”; and (3) “[r]eport requested data to the SEA or the GaDOE.” Ex. 7 at ¶ (5)(d).

IV. Direction from State-Employed GNETS Program Personnel

33. GaDOE employs both a GNETS Program Manager and GNETS Program Specialist who oversee the State’s responsibilities related to the GNETS Program. *See* Ex. 1, Def. Resp. to RFA No. 14; Ex. A, Cleveland Dep. 23:12-17, 25:17-19; Deposition of Clara Keith Brown (“Keith Dep.”) 25:22-26:4 (attached hereto as “Ex. K”).

34. Organizationally, GNETS (including these dedicated positions) has been housed in different GaDOE departments over time but is currently located within the Special Education Services and Supports Division of GaDOE's Office of Federal Programs. *See* Ex. 12; Deposition of Wina Low ("Low Dep.") 30:16-35:25 (attached hereto as "Ex. L"); Deposition of Sonia Shaun Owen ("Owen Dep.") 30:14-31:7, 33:21-34:8 (attached hereto as "Ex. M").

35. GaDOE first hired a GNETS Program Manager, whose work focuses exclusively on the GNETS Program, in 2016. *See* Ex. 1, Def. Resp. to RFA No. 15; Ex. A, Cleveland Dep. 36:12-37:14, 66:10-14; Deposition of Deborah Gay ("Gay Dep.") 108:1-10 (attached hereto as "Ex. N"); Ex. K, Keith Dep. 236:6-13; Ex. L, Low Dep. 77:10-18.

36. The GNETS Program Manager hired in 2016 was Nakeba Rahming. Ex. 1, Def. Resp. to RFA No. 16.

37. The GNETS Program Manager is sometimes referred to as the GNETS Program Director. Ex. N, Gay Dep. 106:16-107:10; Deposition of William "Matt" Jones ("W. Jones Dep.") 209:18-21 (attached hereto as "Ex. O"); Ex. K, Keith Dep. 25:22-26:4; Ex. B, Livingston Dep. 70:13-21; Ex. J, McCollum Dep. 35:12-15, 208:15-23.

38. Nakeba Rahming reported directly to the State School Superintendent's Chief of Staff, William "Matt" Jones, and worked closely with a DBHDD Director named Clara Keith. Ex. 1, Def. Resp. to RFA No. 18; Ex. O, W. Jones Dep. 24:23-25:14; Ex. K, Keith Dep. 33:13-20; 46:19-47:2, 47:13-48:1.

39. GaDOE's Chief Financial Officer James "Ted" Beck described the GNETS Program Manager as "the coordinator for the 20+ sites" who "work[s] to implement our policies and procedures with more standardization across each location." Ex. 13; Deposition of James Beck ("Beck Dep.") 10:3-7, 23:4-21, 154:1-156:5 (attached hereto as "Ex. P").

40. Prior to Nakeba Rahming's hire, GaDOE employed other personnel who dedicated some portion of their time to GNETS Program management. Ex. 1, Def. Resp. to RFA No. 17; Ex. N, Gay Dep. 27:1-29:8; Deposition of Patricia Wolf ("Wolf Dep.") 249:22-250:6 (attached hereto as "Ex. Q").

41. In addition to the GNETS Program Manager, GaDOE hired a GNETS Program Specialist for the first time in 2018. Ex. 1, Def. Resp. to RFA No. 19.

42. The GNETS Program Specialist, whose work focuses exclusively on the GNETS Program, reports to the GNETS Program Manager. *See* Ex. 1, Def. Resp. to RFA No. 21; Exs. 14-15; Ex. A, Cleveland Dep. 66:10-12; Ex. C, Stevenson Dep. 25:6-12, 78:6-8.

43. Lakesha Stevenson was hired as the GNETS Program Specialist in 2018 and has continued to hold that position since then. Ex. 1, Def. Resp. to RFA No. 20; Ex. C, Stevenson Dep. 24:15-22.

44. The current GaDOE employee serving as GNETS Program Manager, Vickie Cleveland, has held that position since 2018. Ex. 1, Def. Resp. to RFA Nos. 22-23.

A. Project Management Plan

45. In late 2015 and 2016, State personnel—including the GNETS Program Manager—developed a comprehensive plan for the GNETS Program containing “detailed action steps to address program improvements” and metrics for tracking the State’s progress in ensuring implementation. *See* Ex. N, Gay Dep. 156:3-156:13; Ex. K, Keith Dep. 65:23-66:22, 68:21-25, 96:20-97:5, 98:21-101:22, 169:1-170:25.

46. This Project Management Plan sought program improvements in a wide range of areas, including program administration, instruction, therapeutic services, facilities, and funding. *See* GA00061974 (attached hereto as “Ex. 16”) (redactions applied by State); GA00198520 (attached hereto as “Ex. 17”) (redactions applied by State).

47. The Project Management Plan specifically referenced the GNETS Strategic Plan as an action step for improving program administration. *See* Ex. 16 (GA00061974); Ex. 17 (GA00198520).

B. The GNETS Strategic Plan and Self-Assessment

48. GaDOE requires all regional GNETS programs to comply with the GNETS Strategic Plan. *See* Ex. 18 at GA00362008; Deposition of Whitney Braddock (“Braddock Dep.”) 206:10-19, 208:1-11 (attached hereto as “Ex. R”); Deposition of Derrick Gilchrist (“Gilchrist Dep.”) 243:16-25, 244:21-245:8 (attached hereto as “Ex. S”); Deposition of Cassandra Holifield (“Holifield Dep.”) 196:24-197:1 (attached hereto as “Ex. T”); Ex. K, Keith Dep. 90:25-91:6, 192:6-15; Ex. B, Livingston Dep. 69:17-70:12; Deposition of Celest Ngeve (“Ngeve Dep.”) 285:14-17 (attached hereto as “Ex. U”); Ex. M, Owen Dep. 193:4-15; Ex. C, Stevenson Dep. 42:10-17, 47:24-48:7; Ex. Q, Wolf Dep. 238:7-18.

49. In or around 2016, the GNETS Program Manager collaborated with a committee of regional GNETS program directors and various State personnel, including from GaDOE and DBHDD, to oversee the creation of the GNETS Strategic Plan and its supporting documents. *See* Ex. 1, Def. Resp. to RFA No. 129; Ex. 18 at GA00362006, GA00362008; Ex. 19 at GA00221994, GA00221996; Ex. R, Braddock Dep. 206:10-207:2; Ex. A, Cleveland Dep. 204:21-205:12; Ex. N, Gay Dep. at 166:3-

167:1, 168:19-169:2; Ex. S, Gilchrist Dep. 41:9-19; Ex. K, Keith Dep. 67:17-19, 94:20-95:6, 109:3-14, 177:8-178:6.

50. Prior to GaDOE's implementation of the GNETS Strategic Plan in 2016, it had developed and implemented another strategic document that set forth goals and expectations for the GNETS Program and was updated over a four-year period. *See* Ex. 20; Ex. N, Gay Dep. 163:1-167:1.

51. The GNETS Strategic Plan effectively replaced prior strategic documents and performance monitoring tools that GaDOE required regional GNETS programs to use. *See* Ex. 21; Ex. N, Gay Dep. 171:11-173:20.

52. In the years since initially developing and implementing the Strategic Plan, the State has led periodic revisions of the Plan. *See* Ex. 18 at GA00362006; Ex. A, Cleveland Dep. at 204:21-206:11, 210:19-212:13.

53. The GNETS Strategic Plan touches nearly every aspect of the GNETS Program's operations and outlines the standards that govern regional GNETS programs in the following six "focus areas": Program Leadership and Accountability; Behavior Support and Therapeutic Services; Instructional/Academic Support; Program Funding and Fiscal Management; Integration of Services and Capacity Building; and Facilities Management and Safety. Ex. 18 at GA00362009; *see* Ex. A, Cleveland Dep. 204:21-205:2.

54. The 2016 version of the Strategic Plan had seven focus areas, but the “Program Leadership” and “Program Accountability” sections were combined to create what is now the “Program Leadership and Accountability” section. *See* Ex. 18 at GA00362008; Ex. 19 at GA00221997; Ex. R, Braddock Dep. 207:3-11; Ex. A, Cleveland Dep. 204:21-206:1; Ex. C, Stevenson Dep. 48:8-48:22.

55. Each focus area outlined in the GNETS Strategic Plan lists an overarching goal, individual action items, and examples of the evidence regional GNETS programs must provide to demonstrate implementation of each action item. *See, e.g.*, Ex. 18 at GA00362009; Ex. A, Cleveland Dep. 210:5-18, 213:6-214:10; Ex. K, Keith Dep. 178:20-180:22.

56. The “Program Leadership and Accountability” component of the Strategic Plan requires, among other things, that GNETS Directors “ensure that the [Strategic Plan] activities are implemented within their programs.” Ex. 18 at GA00362011.

57. The “Behavioral Support and Therapeutic Services” component of the Strategic Plan requires, among other things, that GNETS Directors implement interventions and practices like Positive Behavior Intervention Supports (“PBIS”) and Trauma Informed Care on a daily basis, ensure the use of Functional Behavior Assessments (FBAs) and Behavior Intervention Plans (BIPs), administer standardized

assessments sanctioned by the State (e.g., SDQ, BASC-3) to track the social and emotional development of students placed in the GNETS Program, and ensure GNETS staff receive training on other interventions and supports. *See* Ex. 18 at GA00362012-GA00362014.

58. The “Instructional/Academic Support” component of the Strategic Plan requires, among other things, that GNETS teachers and other staff comply with various instruction-related performance standards and expectations. *See* Ex. 18 at GA00362015-GA00362016.

59. The “Program Funding and Fiscal Management” component of the Strategic Plan requires, among other things, that regional GNETS programs’ solicitation and use of GNETS grant funds comply with standards outlined in the Strategic Plan. *See* Ex. 18 at GA00362017.

60. The “Integration of Services and Capacity Building” component of the Strategic Plan requires, among other things, that GNETS Directors collaborate with LEAs to ensure that students have an opportunity to receive services in the least restrictive environment. *See* Ex. 18 at GA00362018-GA00362020.

61. The “Facilities Management and Safety” component of the Strategic Plan requires GNETS Directors to (1) monitor the site for safety and ADA compliance and

maintenance and (2) communicate all identified concerns to the LEA and or SEA and advocate for repairs/improvements. *See* Ex. 18 at GA00362020.

62. To ensure that regional GNETS programs “implement[] the action items within the strategic plan,” the Strategic Plan requires that regional GNETS directors “reflect on implementation and practices at each GNETS site” by using a “self-assessment rating.” Ex. 18 at GA00362009-GA00362010.

63. Using a rubric created by the State, regional GNETS programs must conduct self-assessment ratings of their compliance with the various components of the GNETS Strategic Plan twice annually. Exs. 22-23; Ex. 24 at GA00901799; Ex. R, Braddock Dep. 209:7-17; Ex. A, Cleveland Dep. 206:13-208:1, 210:19-212:18; Ex. S, Gilchrist Dep. 245:17-24; Ex. T, Holifield Dep. 197:24-198:18; Ex. K, Keith Dep. 174:12-176:25, 178:21-180:22, 184:2-185:12, 186:13-188:10; Ex. U, Ngeve Dep. 294:8-295:15; *see generally* Ex. 18 at GA00362009-GA00362010.

64. In addition, the State requires regional GNETS directors to submit “artifacts,” or evidence, that demonstrate they meet the criteria indicated on the self-assessment. Ex. 24 at GA00901799; Deposition of Samuel Clemons (“Clemons Dep.”) 250:12-20 (attached hereto as “Ex. V”); Ex. I, Cole Dep. 390:25-391:14; Ex. S, Gilchrist Dep. 246:4-14; Ex. T, Holifield Dep. 200:15-201:3; Ex. B, Livingston Dep. 69:17-70:12; Ex. U, Ngeve Dep. 288:24-289:16.

65. Historically, GaDOE personnel—specifically the GNETS Program Manager and/or GNETS Program Specialist—conducted on-site reviews after the programs submitted their self-assessments. *See* Ex. R, Braddock Dep. 210:5-14; Ex. V, Clemons Dep. 250:21-251:9; Ex. I, Cole Dep. 391:15-25; Ex. G, Futch Dep. 93:20-94:14; Ex. S, Gilchrist Dep. 246:4-23; Ex. T, Holifield Dep. 198:19-199:6; Ex. K, Keith Dep. 90:22-91:6; Ex. B, Livingston Dep. 68:12-69:16; Ex. U, Ngeve Dep. 288:3-23, 290:19-291:18; Ex. C, Stevenson Dep. 49:20-24.

66. During these on-site strategic plan reviews, GaDOE evaluated the regional GNETS programs' self-assessment, reviewed artifacts, asked questions, toured facilities, and provided feedback. *See* Ex. 18 at GA00362009; Exs. 15, 24-25; Ex. R, Braddock Dep. 208:6-209:17, 210:5-14; Ex. V, Clemons Dep. 250:8-251:9, 254:7-255:20; Ex. I, Cole Dep. 387:17-388:2, 390:22-391:23; Ex. S, Gilchrist Dep. 246:4-247:6; Ex. T, Holifield Dep. 198:19-199:23, 200:15-201:3; Ex. K, Keith Dep. 178:20-180:22, 181:7-183:22; Ex. B, Livingston Dep. 68:12-70:12, 80:25-81:17; Ex. U, Ngeve Dep. 288:3-289:12, 290:19-291:18, 304:8-305:22; Ex. C, Stevenson Dep. 46:10-23, 49:9-51:6.

67. The onsite strategic plan reviews were scheduled on a rotating basis or based on a regional GNETS program's prior performance. *See* Ex. 26 at

GA00337238; Ex. A, Cleveland Dep. 228:12-25, 230:3-231:6; Ex. I, Cole Dep.

387:17-388:8; Ex. S, Gilchrist Dep. 246:11-14; Ex. R, Braddock Dep. 210:23-211:15.

68. Onsite strategic plan reviews lasted anywhere from several hours to a full school day. *See* Ex. I, Cole Dep. 391:19-392:3; Ex. U, Ngeve Dep. 290:19-292:12.

69. After the onset of the COVID-19 pandemic, strategic plan reviews were paused and then conducted virtually. *See* Ex. 27; Ex. A, Cleveland Dep. 222:17-25; Ex. G, Futch Dep. 93:20-94:11; Ex. C, Stevenson Dep. 164:14-165:7, 167:4-19.

70. On occasion, GaDOE has required regional GNETS programs to submit sample IEPs as part of the Strategic Plan process so that GaDOE could review those IEPs, assess the regional GNETS program's compliance with implementation criteria, and provide feedback. Ex. T, Holifield Dep. 241:11-243:10.

71. Starting in 2022, GaDOE consolidated the strategic plan self-assessment submissions into the grant application process for regional GNETS programs. Ex. I, Cole Dep. 389:22-390:10; 395:9-15; Ex. C, Stevenson Dep. 149:4-151:8. *See* Ex. A, Cleveland Dep. 206:25-207:19.

72. Once a regional GNETS program submits the artifacts demonstrating its compliance with GNETS Strategic plan components, GaDOE reviews those artifacts and requests any additional information it may require. *See* Ex. B, Livingston Dep. 81:6-17; Ex. C, Stevenson Dep. 160:22-163:2; *see, e.g.*, Ex. 28.

73. At the conclusion of the GNETS Strategic Plan review process, GaDOE provides regional GNETS programs with feedback on their compliance. Ex. 7; Ex. 18 at GA00362008-GA00362010; Ex. V, Clemons Dep. 250:24-251:9; Ex. A, Cleveland Dep. 158:24-159:10, 166:11-167:10, 210:5-18, 217:20-219:8; Ex. G, Futch Dep. 94:15-95:18; Ex. T, Holifield Dep. 200:15-202:4; Deposition of Jaqueline Neal (“Neal Dep.”) 23:21-24:13 (attached hereto as “Ex. W”).

74. In the past, this feedback has included each regional GNETS program’s final ratings on the various GNETS Strategic Plan components, as well as other action steps each regional GNETS program should take in the future. *See* Ex. 18 at GA00362008-GA00362010; Exs. 15, 29; Ex. V, Clemons Dep. 250:24-251:9, 253:7-254:2; Ex. T, Holifield Dep. 201:21-202:4; Ex. U, Ngeve Dep. 295:16-297:7; Ex. C, Stevenson Dep. 46:10-23, 49:20-24.

75. More recently, GaDOE has moved away from providing the regional GNETS programs with numerical scores, and instead provides “feedback on implementation based on the rubric rating”—that is ratings of “operational,” “emerging,” or “not evident.” *See, e.g.*, Ex. A, Cleveland Dep. 230:16– 231:14.

76. Participation in the Strategic Plan’s self-assessment and review process remains mandatory; regional GNETS programs cannot opt out. *See* Ex. 18 at

GA00362008-GA00362011; Ex. 29; Ex. S, Gilchrist Dep. 243:16-25; Ex. B, Livingston Dep. 69:17-70:12; Ex. U, Ngeve Dep. 285:14-286:3.

C. Other State-Created Documents Governing the GNETS Program

77. Regional GNETS programs use a standardized set of forms to assess student eligibility for the GNETS Program. *See* Exs. 30-39; Ex. R, Braddock Dep. 101:21-102:24, 103:15-104:3, 107:11-110:10; Ex. V, Clemons Dep. 51:21-52:6, 61:20-62:19; Ex. G, Futch Dep. 350:23-353:5; Ex. S, Gilchrist Dep. 228:5-233:6; Ex. W, Neal Dep. 128:10-130:11; Ex. U, Ngeve Dep. 191:18-193:24, 195:21-198:5, 201:16-204:15, 220:11-222:9, 235:13-238:1, 313:25-316:22; Ex. Q, Wolf Dep. 170:19-175:22.

78. This standardized set of forms is known as the Consideration of Services Forms or Consideration of Services Packet (hereafter “Consideration of Services Forms”). *See, e.g.*, Exs. 40-43; Ex. Q, Wolf Dep. 191:14-194:8.

79. The Consideration of Services Forms include a Confidential Student Information Packet, Guiding Questions for Consideration of GNETS Services Form, GNETS Services Flow Chart, and Request for GNETS Consultation Form. *See* Exs. 31-33, 36-39, 44-47; Ex. R, Braddock Dep. 107:11-108:1; Ex. V, Clemons Dep. 206:2-207:7, 208:3-210:7, 210:19-211:5, 211:21-212:11, 213:18-20; Ex. I, Cole Dep.

192:18-20, 193:6-11, 194:21-195:4, 200:23-202:21, 213:23-214:24; Ex. G, Futch Dep. 325:7-326:5, 328:17-23; Ex. S, Gilchrist Dep. 228:5-233:6; Ex. W, Neal Dep. 128:10-130:11; Ex. U, Ngeve Dep. 191:18-193:24, 195:21-198:5, 201:16-204:15, 220:11-222:9, 235:13-238:1, 313:25-316:22; Ex. Q, Wolf Dep. 185:4-22.

80. GaDOE oversaw the development of the Consideration of Services Forms. *See* Exs. 32, 40-43, 48-53; Ex. Q, Wolf Dep. 187:6-205:15; *see generally* Ex. I, Cole Dep. 97:1-98:14; Ex. S, Gilchrist Dep. 228:5-233:6; Ex. U, Ngeve Dep. 192:13-193:6, 201:16-202:17, 207:1-6, 220:6-24.

81. The GNETS Program Manager, who assembled a committee to develop the first drafts of the Consideration of Services Forms, directed the committee to ensure that the forms were aligned to the State's GNETS Rule, reviewed the Forms, determined the process for obtaining feedback on the Forms from other stakeholders, and approved the final versions of the Forms. Exs. 40, 43, 48-49, 51-53; Ex. Q, Wolf Dep. 185:4-189:18, 190:8-205:15.

82. The GNETS Program Manager dictated when and how the Consideration of Services Forms would be implemented by the regional GNETS programs. Ex. 41, 43, 53; Ex. Q, Wolf Dep. 192:18-194:8, 203:19-205:15.

83. Before the State created and implemented documents like the Consideration of Services Forms and the Strategic Plan, GaDOE provided regional

GNETS programs a GNETS Operations Manual that it created “to ensure GNETS programs operate efficiently, effectively and consistently throughout the network.” Ex. 54 at GA00403826; *see* Ex. 55; Ex. T, Holifield Dep. 250:10-251:2, 252:6-14; Ex. K, Keith Dep. 55:12-56:1, 63:7-16; Ex. Q, Wolf Dep. 241:8-243:7.

D. Data Directives

84. The GNETS Program Manager and GNETS Program Specialist routinely require regional GNETS programs to submit various operational data to GaDOE. *See* Exs. 15, 56-60; Ex. A, Cleveland Dep. 111:22-112:17, 133:21-135:8, 174:20-175:8, 186:14-187:2, 192:17-198:15, 198:16-203:7, 204:6-14; Ex. T, Holifield Dep. 93:11-102:23; Ex. B, Livingston Dep. 148:15-151:2; 223:24-225:4; 227:8-228:19; 241:6-242:12 Ex. W, Neal Dep. 114:14-116:1, 335:17-336:12; Ex. U, Ngeve Dep. 179:17-182:10, 183:18-184:2; Ex. C, Stevenson Dep. 46:10-23, 69:8-20, 212:5-214:5.

85. This data includes, but is not limited to, information regarding student placement into and transition out of GNETS, therapeutic services and interventions provided to students in GNETS, segments in GNETS, student disability categories, student enrollment data, GNETS teacher certifications, and student restraints. *See* Exs. 56, 58-63; Ex. T, Holifield Dep. 93:11-102:23; Ex. B, Livingston Dep. 148:15-151:2, 223:24-225:4, 227:8-228:19, 241:6-242:12; Ex. L, Low Dep. 142:11-20, 192:6-20, 193:17-196:22, 199:4-23; Ex. W, Neal Dep. 114:14-116:1, 335:17-336:12.

86. GaDOE has also required regional GNETS programs to review and submit information to GaDOE relating to the IEP files of individual students placed in the GNETS Program. Exs. 57, 64-65; Ex. A, Cleveland Dep. 192:17-193:5, 194:13-17, 195:5-24, 198:16-202:23; Ex. I, Cole Dep. 365:18-366:4, 368:20-370:13.

87. GaDOE required this IEP file review process as recently as 2021. *See* Exs. 57, 64-66; Ex. A, Cleveland Dep. 192:17-193:5, 194:13-196:8; Ex. I, Cole Dep. 365:18-366:4, 368:20-370:13; Ex. U, Ngeve Dep. 259:21-261:22.

88. As part of the process, GaDOE mandated that regional GNETS program directors review and produce to GaDOE extensive information for every student receiving GNETS services, whether those students were served at GNETS centers or school-based locations. *See* Exs. 57, 65; Ex. A, Cleveland Dep. 192:17-193:5, 194:13-17, 195:5-24, 198:16-202:23; Ex. I, Cole Dep. 365:18-366:4, 368:20-369:23; Ex. C, Stevenson Dep. 212:5-214:5.

89. GaDOE dictated the information that regional GNETS program directors were to provide GaDOE regarding each individual student. *See, e.g.*, Exs. 57, 65; Ex. A, Cleveland Dep. 192:17-193:5, 194:13-17, 195:5-24, 198:16-202:23; Ex. I, Cole Dep. 365:18-366:4, 368:20-369:23; Ex. C, Stevenson Dep. 212:5- 214:5.

90. The form outlining the IEP information required by GaDOE seeks information related to each student's disability, placement history, behavioral

interventions, and history of restraint and seclusion, as well as information related to the regional GNETS program's compliance with the entrance criteria outlined in the State GNETS Rule. *See, e.g.*, Ex. 57; Ex. A, Cleveland Dep. 192:17-193:5, 194:13-17, 195:5-24, 198:16-202:23; Ex. I, Cole Dep. 365:18-366:4, 368:20-369:15.

E. Direction Regarding Program Administration

91. State personnel, including the GNETS Program Manager and Program Specialist, facilitate and lead periodic statewide GNETS Director meetings. *See* Ex. 15; Ex. R, Braddock Dep. 32:8-34:22; Ex. A, Cleveland Dep. 73:1-14, 181:21-182:21; Ex. I, Cole Dep. 26:18:-27:2, 36:1-37:6; Ex. G, Futch Dep. 97:1-18, 98:7-11; Ex. S, Gilchrist Dep. 31:18-20, 31:24-32:20; Ex. B, Livingston Dep. 79:4-80:22; Ex. W, Neal Dep. 30:7-31:7, 350:5-351:9; Deposition of Talithia Newsome ("Newsome Dep.") 56:6-57:22 (attached hereto as "Ex. X"); Ex. C, Stevenson Dep. 46:10-23, 71:13-72:1, 72:18-73:2.

92. Regional GNETS program directors regularly seek direction from State GNETS personnel on a host of day-to-day matters regarding student eligibility and service delivery. *See, e.g.*, Ex. 67 (Oconee GNETS Director seeking confirmation from GaDOE regarding student eligibility and the 2017 GNETS Rule); Ex. 68 (clarifying whether a student whose home school system is in the Oconee GNETS catchment area could be served by a different regional GNETS); Ex. 69 (Coastal

Academy GNETS Director notifying GaDOE about changes in the LEAs served by the regional GNETS program using a previously required form created by GaDOE); Ex. 70 (Elam Alexander Academy GNETS Director seeking guidance from GaDOE regarding the placement of students with certain disability designations); Ex. 71 (Horizon Academy GNETS Director seeking clarification as to whether GNETS accepts students from charter schools); Ex. 72 (Horizon Academy GNETS Director seeking guidance as to whether an LEA could require a student transitioning out of GNETS to return to the LEA on a trial basis); Ex. G, Futch Dep. 241:17-245:8, 245:25-248:23 (Coastal Academy GNETS Director seeking guidance from GaDOE regarding use of GNETS funding); Ex. B, Livingston Dep. 233:22-236:4, 236:5-239:22 (Harrell GNETS Director seeking clarification from GaDOE about job qualification requirements for regional GNETS program staff); *see also* Exs. 73-86; Ex. R, Braddock Dep. 116:11-12, 116:21, 117:13-118:9; Ex. V, Clemons Dep. 220:19-221:13, 221:22-225:20; Ex. I, Cole Dep. 34:5-21, 108:3-12, 108:21-111:11, 115:14-117:4, 120:11-121:19; Ex. G, Futch Dep. 118:10-120:2, 120:5-122:17; Ex. S, Gilchrist Dep. 58:16-59:4, 59:23-64:15, 209:3-17, 210:1-211:14; Ex. U, Ngeve Dep. 231:11-233:25, 247:24-248:17; Ex. C, Stevenson Dep. 175:23-176:10, 177:16-180:17; Ex. Q, Wolf Dep. 213:21-215:20, 216:2-217:15.

93. Two regional GNETS program directors even identified the current GNETS Program Manager and GNETS Program Specialist as individuals to whom they report. Ex. I, Cole Dep. 25:6-13, 26:8-15; Ex. X, Newsome Dep. 54:25-55:8.

94. The State requires regional GNETS programs to administer specific academic and behavioral assessments to students receiving GNETS services, such as the i-Ready instructional and diagnostic measure, the Strengths and Difficulties Questionnaire (SDQ), and the BASC-3. Exs. 87-90; Ex. S, Gilchrist Dep. 165:2-23, 166:15-18, 167:8-15, 168:17-169:1, 184:8-185:9, 197:2-9; Ex. T, Holifield Dep. 148:3-149:3, 152:11-153:15, 236:19-238:6; Ex. Q, Wolf 207:8-19, 208:16-210:23.

95. In several instances, the State contracts directly with service providers to make these assessments available to regional GNETS programs. *See* Ex. 91 at GA00054567.013 (various GaDOE supports and services provided via contract); Ex. 92 (contract for GNETS Program access to i-Ready); Ex. 93 (contract for GNETS Program access to the BASC-3); Ex. P, Beck Dep. 184:9-185:17, 185:24-188:21; Ex. A, Cleveland Dep. 189:12-21, 190:21-192:16; Ex. O, W. Jones Dep. 169:25-170:16, 176:4-21.

96. The State provides regional GNETS programs with direction as to when and how they should administer each of these assessments. Exs. 94-97; Ex. V, Clemons Dep. 230:11-235:1; Ex. T, Holifield 132:1-4, 132:24-134:25, 233:3-234:3;

Ex. U, Ngeve Dep. 251:23-252:20, 253:1-15, 254:8-24, 255:15-23, 256:25-257:10, 345:14-25; Ex. Q, Wolf 219:2-222:18, 224:5-225:3.

F. Direction Regarding Program Facilities

97. The Facilities Services Unit of GaDOE conducted a Facility Conditions Assessment of GNETS Program facilities during the 2015 and 2016 calendar years (“Facility Conditions Assessment”). Ex. 1, Def. Resp. to RFA No. 69; Deposition of Michael Rowland (“Rowland Dep.”) 47:16-50:19 (attached hereto as “Ex. Y”).

98. GaDOE planned to use the findings of the Facility Conditions Assessment to facilitate decision-making regarding the award of State funds to regional GNETS programs or their fiscal agents for repairs or upgrades to their GNETS Program facilities. Exs. 98-99; Ex. K, Keith Dep. 214:6-25; Ex. Y, Rowland Dep. 47:16-50:19, 57:7-58:14, 59:21-62:18, 64:21-65:24, 66:3-68:12-16, 78:7-80:20, 94:4-97:21.

99. The State, through the Georgia State Financing and Investment Commission, entered into a contract with an architectural firm to conduct the Facility Conditions Assessment. Exs. 99-101; Ex. P, Beck Dep. 135:11-136:15, 139:12-141:22; Ex. Y, Rowland Dep. 78:7-79:20, 160:6-161:6.

100. In the summer of 2016, based on a report of the architectural firm's findings, the State identified nine GNETS Program facilities in such poor physical condition that it concluded they could not continue serving students in the GNETS Program. Ex. 1, Def. Resp. to RFA No. 81; Exs. 102-104; Ex. O, W. Jones Dep. 189:4-190:6, 193:1-194:25; Ex. K, Keith Dep. 226:16-229:5; Ex. Y, Rowland Dep. 80:21-82:2, 83:5-86:21, 145:7-146:20.

101. In late July 2016, Mike Royal, Chairman of the State Board of Education, issued written notifications that the nine GNETS Program facilities could no longer be used to serve students in the GNETS Program and the affected regional GNETS programs would need to move students from those facilities to alternate site locations. Exs. 100, 102; Ex. K, Keith Dep. 226:16-229:22, 230:14-232:18; Ex. Y, Rowland Dep. 86:22-88:1; *see also* Ex. R, Braddock Dep. 219:21-220:23.

102. GaDOE and other State personnel created a Facility Remediation Plan in relation to GNETS Program facilities (other than the nine referenced above) that were found to have identified needs following the Facility Conditions Assessment. Ex. Y, Rowland Dep. 94:4-96:13.

103. For GNETS Program facilities where the Facility Conditions Assessment identified needs, GaDOE offered the fiscal agents of the affiliated regional GNETS programs the option of submitting a proposal and timeline setting forth a plan to

relocate the students served at the GNETS Program facility to a different facility or applying for a State grant to help fund the necessary repairs or upgrades to the GNETS Program facility. Ex. 1, Def. Resp. to RFA No. 87; Ex. Y, Rowland Dep. 94:4-96:13.

104. For those regional GNETS programs or fiscal agents that relocated students in the GNETS Program from an existing GNETS facility to a new (i.e., different) site after the Facility Conditions Assessment, the new site was required to be approved by GaDOE. Ex. 1, Def. Resp. to RFA No. 89.

105. GaDOE required that a Letter of Assurance be signed by regional GNETS programs or fiscal agents applying for State grants to make repairs to GNETS facilities after the Facility Conditions Assessment was complete. Ex. 1, Def. Resp. to RFA No. 90; Ex. 105; Ex. Y, Rowland Dep. 111:21-115:5.

106. That Letter of Assurance included a provision that the regional GNETS program would agree to occupy the GNETS facility being repaired or upgraded for no less than 10 years, absent prior approval from GaDOE's Facilities Services Unit. Ex. 1, Def. Resp. to RFA No. 91; Ex. 105; Ex. R, Braddock Dep. 219:21-220:1, 220:16-23, 221:17-222:2, 222:15-22, 225:10-226:6; Ex. Y, Rowland Dep. 111:21-116:9.

107. The Letter of Assurance also included a provision requiring prior approval from GaDOE for the regional GNETS program to move to a location other

than the one the grant funds were used to improve. Ex. 105; Ex. Y, Rowland Dep. 111:21-116:9.

V. GNETS Program Funding

108. Each year, the General Assembly appropriates state and federal funds necessary to operate the State’s departments and agencies through a State appropriations bill. *See* Ga. Const. art. 3, § 9, ¶ II(b); *The Budget Process*, Governor’s Office of Planning and Budget, <https://opb.georgia.gov/budget-information/budget-process> (last visited Oct. 18, 2023) (attached hereto as “Ex. 106”).

109. The Governor’s Office provides input into the State appropriations bill each year. *See* Ga. Const. art. 3, § 9, ¶ II(a).

110. The State appropriations bill approved by the General Assembly becomes law either with the signature of the Governor or in the absence of a veto by the Governor. *See* Ga. Const. art. 3, § 5, ¶ XIII; Ex. 1, Def. Resp. to RFA 28; Ex. 106.

111. Since at least 2015, the annual State appropriations bill has included a specific line item within GaDOE’s section of the bill providing funding for GNETS. *See* H.B. 76, 153rd Gen. Assemb., Reg. Sess. (see p. 93 at 134.100) (Ga. 2015); H.B. 751, 153rd Gen. Assemb., Reg. Sess. (see p. 54 at 24.9) (Ga. 2016); H.B. 44, 154th Gen. Assemb., Reg. Sess. (see p. 96 at 142.100) (Ga. 2017); H.B. 684, 154th Gen.

Assemb., Reg. Sess. (see p. 50 at 24.10) (Ga. 2018); H.B. 31, 155th Gen. Assemb., Reg. Sess. (see p. 100 at 146.100) (Ga. 2019); H.B. 793, 155th Gen. Assemb., Reg. Sess. (see p. 63 at 24.9) (Ga. 2020); H.B. 81, 156th Gen. Assemb., Reg. Sess. (see p. 80 at 142.100) (Ga. 2021); H.B. 911, 156th Gen. Assemb., Reg. Sess. (see p. 65 at 24.8) (Ga. 2022); H.B. 19, 157th Gen. Assemb., Reg. Sess. (see p. 105 at 151.100) (Ga. 2023).

112. The State determines GNETS funding using a formula distinct from the formula used to fund local education agencies. *See* Ex. 1, Def. Resp. to RFA No. 48; Deposition of Geronald Bell (“Bell Dep.”) 117:12-16 (attached hereto as “Ex. Z”).

113. The “Total Funds” amount for the GNETS line item in an annual State appropriations bill consists of federal funds and grants and State funds. *See, e.g.*, H.B. 911, 156th Gen. Assemb., Reg. Sess. (see p. 65 at 24.8) (Ga. 2022).

114. The State can designate a portion of its Federal IDEA funds as discretionary funds to supplement its own spending on educational services for students with disabilities. 30(b)(6) Deposition of Rusk Roam (“Roam 30(b)(6) Dep.”) 27:8-28:3 (attached hereto as “Ex. AA”); *see* Ex. Z, Bell Dep. 42:25-43:8.

115. In exercising this discretion, the State designates millions of its discretionary IDEA funds for use in the GNETS Program. *See* Ex. 91 at

GA00054567.004; Ex. A, Cleveland Dep. 235:12-236:1; Ex. AA, Roam 30(b)(6) Dep. 27:8-22.

116. The majority of the funds allocated to the GNETS Program annually through the line item in the State appropriations bill are State funds. Ex. 1, Def. Resp. to RFA No. 47.

117. Since 2015, the “Total Funds” or “Total Public Funds” amount for the GNETS line item in each annual State appropriations bill has exceeded \$60,000,000, as can be seen in the following breakdown of total funds by funding source:

- FY2015 (\$70,121,479): state - \$62,081,479; federal - \$8,040,000
- FY2016 (\$70,406,538): state - \$62,246,538; federal - \$8,160,000
- FY2017 (\$72,086,561): state - \$63,926,561; federal - \$8,160,000
- FY2018 (\$74,402,830): state - \$66,142,788; federal - \$8,260,042
- FY2019 (\$72,081,380): state - \$63,821,338; federal - \$8,260,042
- FY2020 (\$75,069,567): state - \$63,746,765; federal - \$11,322,802
- FY2021 (\$64,122,733): state - \$52,799,931; federal - \$11,322,802
- FY2022 (\$64,688,732): state - \$53,365,930; federal - \$11,322,802
- FY2023 (\$65,427,745): state – \$54,104,943; federal - \$11,322,802
- FY2024 (\$64,131,220): state - \$52,808,418; federal - \$11,322,802

See H.B. 76, 153rd Gen. Assemb., Reg. Sess. (see p. 93 at 134.100) (Ga. 2015); H.B. 751, 153rd Gen. Assemb., Reg. Sess. (see p. 54 at 24.9) (Ga. 2016); H.B. 44, 154th Gen. Assemb., Reg. Sess. (see p. 96 at 142.100) (Ga. 2017); H.B. 684, 154th Gen. Assemb., Reg. Sess. (see p. 50 at 24.10) (Ga. 2018); H.B. 31, 155th Gen. Assemb., Reg. Sess. (see p. 100 at 146.100) (Ga. 2019); H.B. 793, 155th Gen. Assemb., Reg.

Sess. (see p. 63 at 24.9) (Ga. 2020); H.B. 81, 156th Gen. Assemb., Reg. Sess. (see p. 80 at 142.100) (Ga. 2021); H.B. 911, 156th Gen. Assemb., Reg. Sess. (see p. 65 at 24.8) (Ga. 2022); H.B. 19, 157th Gen. Assemb., Reg. Sess. (see p. 105 at 151.100) (Ga. 2023).

118. After the State legislature sets the total amount of GNETS funding for a given year, GaDOE determines how much of that funding each regional GNETS program will receive. Ex. 7; Ex. Z, Bell Dep. 39:23-40:2, 132:7-133:11; Ex. A, Cleveland Dep. 158:24-166:10.

119. The funding GaDOE awards to each regional GNETS program consists of State funds and federal funds. Ex. J, McCollum Dep. 214:9-215:3; Ex. AA, Roam 30(b)(6) Dep. 36:1-10, 43:13-17.

120. To determine the amount of funds each regional GNETS program will receive, the State applies funding formulas that it created. Ex. Z, Bell Dep. 150:14-151:21, 168:15-170:6.

121. The State uses one funding formula to determine the amount of State funding allocated to each regional GNETS program in any given year (“the GNETS program funding formula”). *See* Ex. Z, Bell Dep. 175:15-176:4.

122. The State determines the amount of federal funding allocated to each regional GNETS program in a given year using a formula tied to the number of

students in each program. Ex. 1, Def. Resp. to RFA 60; Ex. 91 at GA00054567.012; Ex. Z, Bell Dep. 165:9-23; Ex. R, Braddock Dep. 200:21-201:03; Ex. A, Cleveland Dep. 235:12-236:1, 239:4-11.

123. In order to receive a portion of the funds the State appropriates to the GNETS Program, regional GNETS programs must submit a grant application to GaDOE each fiscal year (“GNETS grant application”). Ex. 1, Def. Resp. to RFA No. 24; Exs. 7, 107; Deposition of David Ackerman (“Ackerman Dep.”) 54:9-16 (attached hereto as “Ex. BB”); Ex. A, Cleveland Dep. 158:24-159:10, 162:5-163:16; Ex. I, Cole Dep. 174:7-25; Ex. G, Futch Dep. 239:2-19; Ex. T, Holifield Dep. 105:5-106:6; Ex. O, W. Jones Dep. 257:5-16; Ex. B, Livingston Dep. 199:10-200:13; Ex. W, Neal Dep. 352:2-10; Ex. U, Ngeve Dep. 263:16-264:24.

124. GNETS grant applications are submitted in or around June of each year for funding received during the following school year. Ex. 7; Ex. BB, Ackerman Dep. 118:3-4; Ex. A, Cleveland 158:24-159:10, 162:5-20; Ex. G, Futch Dep. 239:2-14; Ex. T, Holifield Dep. 105:15-108:6; Ex. J, McCollum Dep. 103:6-21; Ex. W, Neal Dep. 93:8-11; Ex. U, Ngeve Dep. 269:20-25; Ex. C, Stevenson 118:23-120:8; Ex. Q, Wolf Dep. 64:6-20.

125. To complete the GNETS grant application, regional GNETS programs must supply voluminous amounts of information to GaDOE. *See, e.g.*, Exs. 107-110;

Ex. V, Clemons Dep. 145:2-146:14; Ex. I, Cole Dep. 174:7-25; Ex. W, Neal Dep. 352:11-354:5; Ex. U, Ngeve Dep. 265:13-266:16, 267:21-268:10, 270:5-13.

126. This information includes details related to regional GNETS programs' staffing, participating school districts, available behavioral and therapeutic supports, trainings, instruction, progress monitoring, program procedures, service delivery, and use of restraints. *See, e.g.*, Exs. 107-108, 110; Ex. A, Cleveland Dep. 186:14-23; Ex. I, Cole Dep. 174:7-19; Ex. B, Livingston Dep. 200:5-13; Ex. U, Ngeve Dep. 263:16-264:3.

127. In addition to completing the GNETS Strategic Plan and self-assessment as part of the annual grant application process, regional GNETS programs must also submit their program budgets to GaDOE and have those budgets approved by GaDOE. Ex. 7; Ex. A, Cleveland Dep. 158:24-159:10, 159:20-161:5, 208:9-210:4; Ex. S, Gilchrist Dep. 245:6-16; Ex. T, Holifield Dep. 104:10-106:18; Ex. J, McCollum Dep. 107:4-109:8; 214:9-22; Ex. C, Stevenson Dep. 149:4-150:5.

128. Regional programs must provide GaDOE with assurances signed by the fiscal agent, the regional program itself, and each participating school district's superintendent and special education director. These assurances require that the assuring entity take, or refrain from taking, specific action related to GNETS Program

operations. *See* Ex. 91 at GA00054563-GA00054566; *see* GA00321621 at GA00321621-GA00321628 (attached hereto as “Ex. 135”).

129. Once GaDOE receives the information submitted by each regional GNETS program, it contacts regional GNETS program directors to request any clarification or adjustment that may be required. *See, e.g.*, Ex 107; Ex. R, Braddock Dep. 91:2-10; Ex. I, Cole Dep. 174:11-19, 175:25-176:16; Ex. T, Holifield Dep. 108:22-109:8; Ex. W, Neal Dep. 354:14-18; Ex. C, Stevenson Dep. 121:18-123:1.

130. After GaDOE ensures that it has all of the information required for the grant application and reviews that information, it approves the application and confirms the amount of funding it will allocate to the regional GNETS program. Ex. T, Holifield Dep. 108:22-109:8; Ex. W, Neal Dep. 354:14-21; Ex. U, Ngeve 264:4-24; Ex. Q, Wolf Dep. 65:13-16.

131. GaDOE notifies regional GNETS programs of their preliminary grant allocations in writing. Exs. 111-113; Ex. J, McCollum Dep. 133:12-134:11, 166:19-168:17.

132. The notification of preliminary grant allocations is followed by final grant award notifications, which are issued after the State Board of Education completes approval of funding. Ex. 113; Ex. Z, Bell Dep. 138:9-139:16; Ex. J, McCollum Dep. 214:9-22; *see also, e.g.*, Ex. R, Braddock Dep. 199:10-17;

Deposition of Larry Winter (“Winter Dep.”) 156:11-157:8 (attached hereto as “Ex. CC”).

133. In addition to the funds that the State provides regional GNETS programs through the grant application process, the State Board of Education provides additional grant funds to some regional GNETS programs for specific purposes. *See* Exs. 114-116; Ex. R, Braddock Dep. 203:25-204:24; Ex. CC, Winter Dep. 170:14-172:2, 173:8-175:22.

134. For example, the State provides several regional GNETS programs—through agreements with the regional GNETS program and their fiscal agents—with grants designed to address their need for therapeutic support and fill service delivery gaps affecting their operations. *See* Exs. 114, 116-124; Ex. Z, Bell Dep. 129:19-130:11; Ex. A, Cleveland Dep. 103:21-106:10, 107:12-21; Ex. I, Cole Dep. 278:7-280:15; Ex. G, Futch Dep. 252:15-253:21; Ex. K, Keith Dep. 132:10-134:20, 136:11-140:1, 147:10-150:12, 153:7-154:15; Ex. B, Livingston Dep. 119:6-120:9; Ex. L, Low Dep. 201:20-24; Ex. W, Neal Dep. 80:6-83:8; 83:24-86:5; Ex. U, Ngeve Dep. 276:5-278:2; Ex. M, Owen Dep. 85:22-86:6, 92:17-93:24, 186:12-187:10; Ex. CC, Winter Dep. 173:8-175:22; Ex. Q, Wolf Dep. 142:16-144:12, 147:13-148:16.

135. In FY19, the State provided nearly \$1.3 million as part of its grant funding for the GNETS Program to cover various contracts for therapeutic services. *See* Ex. 125 at GA00007234; Ex. Z, Bell Dep. 122:23-124:9, 129:3-130:11.

136. Through their fiscal agents, regional GNETS programs that receive grant funds for such therapeutic services must provide the State with various assurances, including that they will procure the therapeutic staff providing such services through a staffing agency approved by GaDOE. Exs. 118, 120, 126-128; Ex. I, Cole Dep. 278:7-280:14; Ex. K, Keith Dep. 140:8-143:5, 153:7-155:6; Ex. W, Neal Dep. 80:6-83:8; Ex. Q, Wolf Dep. 141:6-144:2, 144:19-145:19, 147:13-149:2.

137. Regional GNETS programs seeking to depart from the terms of these assurances have sought permission from GaDOE before doing so. *See, e.g.*, Exs. 118, 126-128; Ex. Q, Wolf Dep. 141:6-144:2, 144:19-145:19, 147:13-148:16.

138. Regional GNETS programs receiving therapeutic services grants must submit detailed logs to GaDOE on a monthly basis regarding the therapeutic services provided by staff procured through the grant. Exs. 59, 126, 129-130; Ex. K, Keith Dep. 140:8-142:19, 143:14-22; Ex. U, Ngeve Dep. 332:5-333:21, 334:16-336:2; Ex. Q, Wolf Dep. 146:1-147:12; *see also generally* Exs. 15, 114, 119, 121, 131; Ex. A, Cleveland Dep. 103:21-106:10, 107:12-25; Ex. I, Cole Dep. 278:7-280:15; Ex. G, Futch Dep. 252:15-253:16; Ex. K, Keith Dep. 147:10-151:3; Ex. B, Livingston Dep.

227:8-228:19; Ex. W, Neal Dep. 114:14-116:1; Ex. C, Stevenson Dep. 46:10-23, 69:8-20, 200:9-201:17.

139. In at least one instance, GaDOE personnel supplied a regional GNETS program receiving the therapeutic services grant with a document outlining responsibilities for a social worker staff position and the regional GNETS program then used that document to create a job description for its State-funded social worker position. Ex. 128; Ex. Q, Wolf Dep. 144:19-145:12, 148:17-149:2.

140. The vast majority of therapeutic staff in regional GNETS programs is funded through State grant monies. *See, e.g.*, Exs. 108-109, 132-134; Ex. R, Braddock Dep. 152:22-153:20, 161:13-25; Ex. V, Clemons Dep. 145:2-7, 147:13-150:6, 167:17-168:9, 193:15-195:1; Ex. S, Gilchrist Dep. 122:4-23, 207:5-21; Ex. U, Ngeve Dep. 265:18-266:16, 271:5-23, 273:15-274:1; Ex. Q, Wolf Dep. 100:12-104:20, 105:3-106:5.

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RYAN K. BUCHANAN
United States Attorney
Northern District of Georgia

/s/ Aileen Bell Hughes
AILEEN BELL HUGHES
GA Bar Number: 375505
Assistant United States Attorney
United States Department of Justice
Richard B. Russell Federal Building
75 Ted Turner Dr. SW, Suite 600
Atlanta, GA 30303-3309
(404) 581.6000
aileen.bell.hughes@usdoj.gov

KRISTEN CLARKE
Assistant Attorney General

SHAHEENA A. SIMONS
Chief

KELLY GARDNER WOMACK
Deputy Chief

ANDREA HAMILTON
WATSON
Special Litigation Counsel

CRYSTAL ADAMS

CLAIRE D. CHEVRIER
FRANCES S. COHEN

MATTHEW GILLESPIE
PATRICK HOLKINS

VICTORIA M. LILL

JESSICA POLANSKY

LAURA C. TAYLOE

MICHELLE L. TUCKER
Trial Attorneys

Educational Opportunities Section

/s/ Andrea Hamilton Watson
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Attorneys for the United States

L.R. 7.1(D) CERTIFICATION

I certify that this Statement of Undisputed Material Facts has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1(C). Specifically, this brief has been prepared using 14-pt Times New Roman Font.

/s/ Andrea Hamilton Watson
ANDREA HAMILTON WATSON

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the foregoing document with the Clerk of Court using the CM/ECF system, which automatically sent counsel of record e-mail notification of such filing.

This 21st day of October, 2023.

/s/ Andrea Hamilton Watson
ANDREA HAMILTON WATSON